

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. _____

MATTHEW P. BYRNE, ADMINISTRATOR
OF THE ESTATE OF EILEEN M. BYRNE,

Plaintiff,

VS.

VOLVO CARS OF NORTH AMERICA, INC.,
VOLVO CAR CORPORATION, AND FORD
MOTOR CORPORATION,

Defendants.

95-0161 - *SV*

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2005 JUN 11 P 1:45
JOSEPH DONOVAN
SUFFOLK/MAGISTRATE

COMPLAINT AND JURY CLAIM

1. This is an action to recover for conscious suffering and death caused by the defective condition of an automobile.

PARTIES

2. The plaintiff, Matthew P. Byrne, is a resident of Marshfield, Plymouth County, Massachusetts, and is the duly appointed Administrator of the Estate of Eileen M. Byrne, late of Marshfield, Massachusetts. The plaintiff brings this action in his representative capacity for the conscious suffering and death of Eileen M. Byrne.

3. The defendant, Volvo Cars of North America, Inc. (hereinafter "VNA") is a duly organized corporation with a principal place of business in Rockleigh, New Jersey. VNA was, until January of 1999, a wholly owned subsidiary of Volvo Car Corporation. VNA regularly conducts business in Suffolk County, Massachusetts and derives substantial economic benefit from such business.

4. The defendant, Volvo Car Corporation (hereinafter "Volvo Car"), is a corporation organized and existing under the laws of Sweden with a principal of business in Gothenburg, Sweden, and until January of 1999 was the parent corporation of VNA, regularly conducted its business in Massachusetts, and derived substantial economic benefit from such business.

5. The defendant, Ford Motor Corporation (hereinafter "Ford"), is a duly organized corporation with a usual place of business in Dearborn, Michigan, In January of 1999 it purchased Volvo Car which included VNA. Ford regularly conducts business in Suffolk County, Massachusetts and derives substantial economic benefit from such business.

GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

6. At some time prior to January 18, 2002, Eileen M. Byrne purchased a Volvo 850 GLT Sedan (hereinafter the "Volvo") which had been designed, manufactured, assembled, inspected, tested, advertised and sold by Volvo Car and which had been imported, inspected, tested, advertised, distributed, sold and serviced by VNA.

7. On or about January 18, 2002, Eileen M. Byrne was operating the Volvo on Route 3 North in the Town of Hingham, Massachusetts, and was struck by a motor vehicle operated by Michelle E. Brady.

8. On impact, Eileen M. Byrne suffered blunt force head and neck trauma as well as severe injuries to her cervical spine from which she eventually died.

9. Eileen M. Byrne was a person within the class of people whom VNA and Volvo Car should reasonably have foreseen would use or be affected by the Volvo.

COUNT 1

CONSCIOUS PAIN AND SUFFERING AGAINST VNA

10. The defendant, VNA, was negligent and careless in the design, manufacture, assembly, inspection, testing, advertising, and sale of the Volvo, as a result of which the Volvo was

in a defective, dangerous and hazardous condition. Moreover, VNA negligently failed to take any steps to correct the defects, specifically, defects in the deployment of its front airbag system, although it knew of the defects and had the ability to correct the defects at little or no cost, and it failed to give Eileen M. Byrne any warning of the defects or danger.

11. As a result of VNA's negligence and of the defective condition of the Volvo, Eileen M. Byrne was severely injured and was caused to suffer consciously before she died.

COUNT II

WRONGFUL DEATH AGAINST VNA

12. The defendant, VNA, was negligent and careless in the design, manufacture, assembly, inspection, testing, advertising, and sale of the Volvo, as a result of which the Volvo was in a defective, dangerous and hazardous condition. Moreover, VNA negligently failed to take any steps to correct the defects, specifically, defects in the deployment of its front airbag system, although it knew of the defects and had the ability to correct the defects at little or no cost, and it failed to give Eileen M. Byrne any warning of the defects or danger.

13. As a result of VNA's negligence and of the defective condition of the Volvo, Eileen M. Byrne was severely injured and was caused to suffer consciously before she died. Eileen M. Byrne eventually died as a result of the injuries which she received.

COUNT III

EXPRESS WARRANTY, CONSCIOUS SUFFERING AGAINST VNA

14. By affirmation, promise, description and otherwise, VNA expressly warranted that the Volvo was free of defects and safe for its ordinary purpose.

15. In breach of these warranties, the Volvo was in a defective, dangerous and hazardous condition, specifically in the deployment of its front airbag system. As a result of the breach of

these warranties and of the defective condition of the Volvo, Eileen M. Byrne was seriously injured and eventually died.

COUNT IV

IMPLIED WARRANTY, CONSCIOUS SUFFERING AGAINST VNA

16. VNA warranted, by implied warranty, that the Volvo was of merchantable quality and fit for its ordinary use.

17. In breach of these warranties, the Volvo was in a defective, dangerous and hazardous condition, specifically in the deployment of its front airbag system. As a result of the breach of these warranties and of the defective condition of the Volvo, Eileen M. Byrne was severely injured. As a result of her injuries, Eileen M. Byrne was caused to suffer consciously before she died.

COUNT V

IMPLIED WARRANTY, WRONGFUL DEATH AGAINST VNA

18. VNA warranted, by implied warranty, that the Volvo was of merchantable quality and fit for its ordinary use.

19. In breach of these warranties, the Volvo was in a defective, dangerous and hazardous condition, specifically in the deployment of its front airbag system. Eileen M. Byrne eventually died as a result of the injuries suffered in the collision.

COUNT VI

CONSCIOUS PAIN AND SUFFERING AGAINST VOLVO CAR

20. The defendant, Volvo Car, was negligent and careless in the design, manufacture, assembly, inspection, testing, advertising, and sale of the Volvo, as a result of which the Volvo was in a defective, dangerous and hazardous condition. Moreover, Volvo Car negligently failed to take any steps to correct the defects, specifically, defects in the deployment of its front airbag system,

although it knew of the defects and had the ability to correct the defects at little or no cost, and it failed to give Eileen M. Byrne any warning of the defects or danger.

21. As a result of Volvo Car's negligence and of the defective condition of the Volvo, Eileen M. Byrne was severely injured and was caused to suffer consciously before she died.

COUNT VII

WRONGFUL DEATH AGAINST VOLVO CAR

22. The defendant, Volvo Car, was negligent and careless in the design, manufacture, assembly, inspection, testing, advertising, and sale of the Volvo, as a result of which the Volvo was in a defective, dangerous and hazardous condition. Moreover, Volvo Car negligently failed to take any steps to correct the defects, specifically, defects in the deployment of its front airbag system, although it knew of the defects and had the ability to correct the defects at little or no cost, and it failed to give Eileen M. Byrne any warning of the defects or danger.

23. As a result of Volvo Car's negligence and of the defective condition of the Volvo, Eileen M. Byrne was severely injured and was caused to suffer consciously before she died. Eileen M. Byrne eventually died as a result of the injuries which she received.

COUNT VIII

EXPRESS WARRANTY, CONSCIOUS SUFFERING AGAINST VOLVO CAR

24. By affirmation, promise, description and otherwise, Volvo Car expressly warranted that the Volvo was free of defects and safe for its ordinary purpose.

25. In breach of these warranties, the Volvo was in a defective, dangerous and hazardous condition, specifically in the deployment of its front airbag system. As a result of the breach of these warranties and of the defective condition of the Volvo, Eileen M. Byrne was seriously injured and eventually died.

COUNT IX

IMPLIED WARRANTY, CONSCIOUS SUFFERING AGAINST VOLVO CAR

26. Volvo Car warranted, by implied warranty, that the Volvo was of merchantable quality and fit for its ordinary use.

27. In breach of these warranties, the Volvo was in a defective, dangerous and hazardous condition, specifically in the deployment of its front airbag system. As a result of the breach of these warranties and of the defective condition of the Volvo, Eileen M. Byrne was severely injured. As a result of her injuries, Eileen M. Byrne was caused to suffer consciously before she died.

COUNT X

IMPLIED WARRANTY, WRONGFUL DEATH AGAINST VOLVO CAR

28. Volvo Car warranted, by implied warranty, that the Volvo was of merchantable quality and fit for its ordinary use.

29. In breach of these warranties, the Volvo was in a defective, dangerous and hazardous condition, specifically in the deployment of its front airbag system. Eileen M. Byrne eventually died as a result of the injuries suffered in the collision.

COUNT XI

FORD MOTOR COMPANY

30. The plaintiff reiterates and incorporates herein the allegations of Paragraphs 1 through 29.

31. Ford Motor Company purchased Volvo Car in January of 1999 and therefore succeeds to any and all obligations and liability which the defendant Volvo Car has with respect to the plaintiff's deceased as the successor and interest to Volvo Car and pursuant to the doctrine of RESPONDEAT SUPERIOR.

WHEREFORE, the plaintiff, Matthew P. Byrne, Administrator of the Estate of Eileen M. Byrne, demands judgment against the defendants Volvo Cars of North America, Inc., Volvo Car Corporation and Ford Motor Corporation for the matters set forth in Counts I through XI herein in an amount to be determined by this Honorable Court plus costs and attorneys fees.

PLAINTIFF REQUESTS JURY TRIAL ON ALL ISSUES SO TRYABLE.

MATTHEW P. BYRNE,

Administrator of the Estate of
Eileen M. Byrne,

by his attorney,

Dated: 1/17, 2005


James A. Brett, Esquire
Reed, Brett, Dawson & Wilson
101 Tremont Street, 9th Floor
Boston, MA 02108
(617) 426-1166

I HEREBY ATTEST AND CERTIFY ON

MAY 2, 2005

FOREGOING DOCUMENTS ARE A TRUE
AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY

MICHAEL J. WATSON
CLERK / DEPUTY CLERK
SUFFOLK SUPERIOR COURT
DEPARTMENT OF TAXATION, COURT

BY: 

ASSISTANT CLERK.

PLAINTIFF:
Matthew P. Byrne, Administrator of the Estate
of Eileen M. Byrne
ATTORNEY: FIRM NAME, ADDRESS AND TELEPHONE
James A. Brett, Esquire
Reed, Brett, Dawson & Wilson, 101 Tremont St.,
9th Floor, Boston, MA (617) 426-1166
Board of Bar Overseers number: 056300

DEFENDANT(S)
Volvo Cars of North America, Inc., Volvo Car
Corporation and Ford Motor Corporation

ATTORNEY (if known)

Origin code and track designation

Place an x in one box only:

- ☒ 1. F01 Original Complaint
☐ 2. F02 Removal to Sup.Ct. C.231,s.104
(Before trial) (F)
☐ 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

- ☐ 4. F04 District Court Appeal c.231. s. 97 & 104 (After
trial) (X)
☐ 5. F05 Reactivated after rescript; relief from
judgment/Order (Mass.R.Civ.P. 60) (X)
☐ 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO

TYPE OF ACTION (specify)

TRACK

IS THIS A JURY CASE?

B05

Products Liability-Auto-
mobile (A)

(X) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A. Documented medical expenses to date:

1. Total hospital expenses \$3,000.00
2. Total Doctor expenses
3. Total chiropractic expenses
4. Total physical therapy expenses
5. Total other expenses (describe)

B. Documented lost wages and compensation to date

C. Documented property damages to date

D. Reasonably anticipated future medical and hospital expenses

E. Reasonably anticipated lost wages

F. Other documented items of damages (describe)

G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

Plaintiff died as a result of her injuries.

TOTAL \$1,003,000.00

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

DATE: 1/14/2005

AOTC-6 mic005-11/99
A.O.S.C. 1-2000

RECEIVED AND FILED

MAY 2, 2005

FOREGOING DOCUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THE COURT AND INDEXED THEREIN

BY: 
ASSISTANT CLERK.

COMMONWEALTH OF MASSACHUSETTS

3

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 05-0161

MATTHEW P. BYRNE, ADMINISTRATOR
OF THE ESTATE OF EILEEN M. BYRNE,

Plaintiff,

VS.

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MOTOR CORPORATION,

Defendants.

AMENDED COMPLAINT AND JURY CLAIM

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COUNT X

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FORD MOTOR COMPANY

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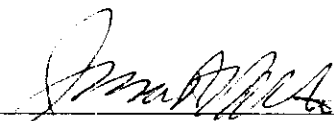
PLAINTIFF REQUESTS JURY TRIAL ON ALL ISSUES SO TRYABLE.

MATTHEW P. BYRNE,

Administrator of the Estate of
Eileen M. Byrne,

by his attorney,

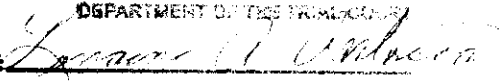
Dated: 4/7, 2005


James A. Brett, Esquire
Reed, Brett, Dawson & Wilson
101 Tremont Street, 9th Floor
Boston, MA 02108
(617) 426-1166

I HEREBY ATTEST AND CERTIFY ON
MAY 2, 2005

THAT THE
FOREGOING DOCUMENT IS A TRUE
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY

MICHAEL JOSEPH DONOVAN
CLERK / DEPUTY CLERK
SUFFOLK SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT

BY: 
ASSISTANT CLERK.

Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT
Case Summary
Civil Docket

04/29/2005
12:16 PM

SUCV2005-00161
Byrne, Admr v Volvo Cars of North America Inc et al

File Date	01/14/2005	Status	Disposed: transfered to other court (dtrans)
Status Date	04/29/2005	Session	H - Civil H, 3 Pemberton Square, Boston
Origin	1	Case Type	B05 - Products liability
Lead Case		Track	A

Service	04/14/2005	Answer	06/13/2005	Rule12/19/20	06/13/2005
Rule 15	04/09/2006	Discovery	03/05/2007	Rule 56	05/04/2007
Final PTC	09/01/2007	Disposition	01/14/2008	Jury Trial	Yes

PARTIES

Plaintiff

Matthew P Byrne, Admr
Active 01/14/2005

Alias plaintiff name

Eileen M Byrne, estate of
Active 01/14/2005

Defendant

Volvo Cars of North America Inc
Service pending 01/14/2005

Private Counsel 056300

James A Brett
Reed O'Reilly & Brett
101 Tremont Street
9th Floor
Boston, MA 02108
Phone: 617-426-1166
Fax: 617-426-5583
Active 01/14/2005 Notify

*** See Attorney Information Above ***

Private Counsel 359480

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Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110
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Private Counsel 556046

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SUCV2005-00161

Byrne, Admr v Volvo Cars of North America Inc et al

Defendant

Volvo Car Corporation
Service pending 01/14/2005

Private Counsel 359480

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I HEREBY ATTEST AND CERTIFY ON

MAY 2, 2005 THAT THE
FORSOING DOCUMENT IS A FULL
TRUE AND CORRECT COPY OF THE
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AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT

BY:

ASSISTANT CLERK.

ENTRIES

Date	Paper	Text
01/14/2005	1.0	Complaint & jury demand on complaint (all issues)
01/14/2005		Origin 1, Type B05, Track A.
01/14/2005	2.0	Civil action cover sheet filed
04/11/2005	3.0	Amended complaint of Matthew P Byrne, Admr (Jury demand) all issues
04/29/2005		Certified copy of petition to removal to U. S. Dist. Court of Defts. Vollvo Cars of North America, LLC, Volvo Car Corporation , and Ford Motor Corporation U. S. Dist. # (05-10861NMG).
04/29/2005		Case REMOVED this date to US District Court of Massachusetts

EVENTS